

RECEIVED

SEP 11 2007

ROBERT H. SHENWELL, CLERK
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE, LOUISIANA

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA

LAFAYETTE DIVISION

LESLEY HARROWER, ET AL

* CIVIL ACTION NO. 04-0305

VERSUS

* JUDGE DOHERTY

THE NATIONAL RAILROAD
PASSENGER CORPORATION, ET AL

* MAGISTRATE JUDGE HILL

ORDER

Pending before this Court is the Motion for Leave to File Motion to Amend Scheduling Order [Doc. 284], filed by plaintiffs Lesley Harrower, David Harrower, and Michael Harrower (“plaintiffs”). The motion is opposed by all defendants in this matter. On August 29, 2007, the Court permitted Thomas C. Jones and Jose M. Bautista to enroll *pro hac vice* on behalf of plaintiffs. [Doc. 279]. Plaintiffs’ new counsel now file the instant motion requesting an additional thirty days to conduct discovery in this case, and to produce and designate a new railroad operations expert.¹

The discovery deadline in this matter was February 23, 2006. The deadline for the exchange of plaintiffs’ expert reports was originally January 24, 2007, but was continued by this Court to February 23, 2007. [Doc. 129]. Thus the discovery and expert deadlines have long since passed in this case.

Additionally, and most importantly, the requested extension would unfavorably impact a

¹ Specifically, plaintiffs seek to (1) depose four Amtrak and BNSF train crew members who witnessed the collision; (2) propound discovery on BNSF requesting production of the audiotape recordings of the conversations between the areas dispatcher and the train crew immediately before, during, and after the collision; (3) request from Amtrak the video recordings of the collision from the RailView Camera on the lead locomotive; and (4) reopen expert discovery to designate and produce for deposition an expert, Jim Scott, an ex-officer for a Class I railroad.

critical evidentiary hearing scheduled on September 24-25, 2007, to be conducted for the purpose of addressing numerous motions, including defendants' motions in limine to preclude evidence of other accidents at the railway crossing in question. This evidentiary hearing, which was originally scheduled on May 25-26, 2007, *has been continued three times at the request of plaintiffs' original counsel.*² A further extension of the evidentiary hearing would no doubt impact the trial of this matter, *which also has been continued three times.*³

At a June 21, 2007 telephone status conference, this Court stated, *and all parties agreed, "all discovery in this matter is complete, all briefing deadlines have expired, and there shall be no further briefing or discovery, unless so ordered by the Court."* [Doc. 263] (emphasis in original).

Clearly, this Court has indulged the plaintiffs' requests for extensions on numerous occasions, as is evidenced by the Court's numerous continuances of both the critical evidentiary hearing and the trial date. Although this Court has sympathy for the plaintiffs' new attorneys, the Court finds that good cause has not been shown for the requested amendments to the scheduling order. Furthermore, the Court finds that defendants in this matter would be substantially prejudiced by such amendments. For the foregoing reasons, and in the interests of fairness to the defendants,

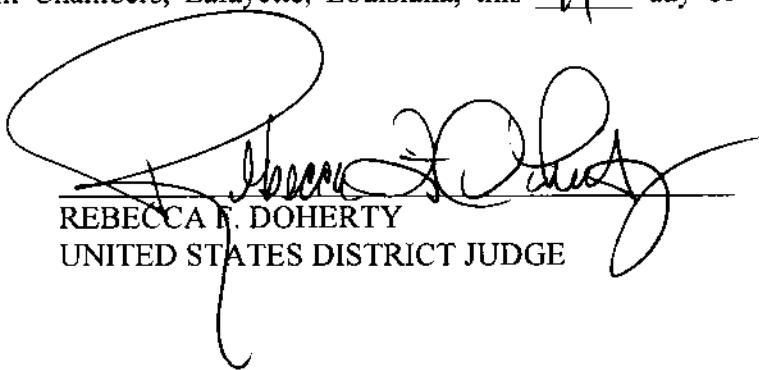
IT IS HEREBY ORDERED that the motion for leave to file motion to amend scheduling order [Doc. 284] is DENIED.

² At plaintiffs' counsel's request , the original hearing, scheduled on May 25, 2007, was continued to June 26-27, 2007 [Doc. 244], to August 13-14, 2007 [Doc. 263], and finally to September 24-25, 2007. [Doc. 270].

³ The original trial date of November 6, 2006 has been continued to June 25, 2007 [Rec. Doc. 112], August 6, 2007 [Doc. 244], and November 5, 2007. [Doc. 263].

IT IS FURTHER ORDERED that the Clerk shall FAX a copy of this order to all counsel of record.

THUS DONE AND SIGNED in Chambers, Lafayette, Louisiana, this 11 day of September, 2007.


REBECCA F. DOHERTY
UNITED STATES DISTRICT JUDGE

COPY SENT

DATE 9-12-07

BY CD

TO via fax: Harper
Toce
Barry
Bautista
Jones
Gidion
McEllisott Jr.
Dills
Hubbold M.
Heik
Anataliu.
Fornier
Oubre
Stelly